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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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**In the Matter of:** )  
)  
**Dana Bowers, Complainant** )  
**v.** )  
**Windstream Kentucky East, LLC, Defendant** )

**Case No. 2010-00447**

**REBUTTAL TESTIMONY**  
**OF**  
**STEPHEN WEEKS**

**ON BEHALF OF WINDSTREAM KENTUCKY EAST, LLC**

Filed June 24, 2011

**REBUTTAL TESTIMONY OF STEPHEN WEEKS**

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**Q. Please state your name and business address.**

A. My name is Stephen Weeks. My business address is 4001 Rodney Parham Road, Little Rock, Arkansas, 72212.

**Q. Did you previously submit testimony in this proceeding?**

A. Yes. I filed direct testimony on June 10, 2011 and am presenting this further rebuttal testimony also on behalf of Windstream East.

**Q. What is the purpose of your rebuttal testimony?**

A. I will respond to what little initial testimony was offered by Dana Bowers (“Mrs. Bowers” or “Plaintiff”) in support of her Complaint.

**Q. Can you please provide an overview of Mrs. Bowers’ initial testimony?**

A. Mrs. Bowers filed abbreviated direct testimony primarily asserting that she is a customer of Windstream East, that she filed the Complaint related to Count III of her lawsuit, that Windstream East has assessed the GRS and in varying amounts, and that we did not tariff the GRS. Her testimony was scarce and did not address many of the questions that arise under her Complaint.

**Q. Did Mrs. Bowers explain how her Complaint came to be filed with the Commission?**

A. Mrs. Bowers states that the Court instructed her to file her Complaint with the Commission to address two discrete tariff issues presented in Count III of her lawsuit. Those issues as asserted by Mrs. Bowers in her testimony are essentially whether the Commission has a policy that “pass-through taxes” are required to be tariffed and whether the language in Windstream East’s Tariff No. 7 pertaining to surcharges by “local taxing authority” encompasses the GRS. (Bowers Direct Testimony, second page,

1 lines 6-9.) Like Mrs. Bowers, I will leave the detailed arguments on this point to my  
2 attorneys, but I can state that in just reviewing her Complaint, I believe the issues that are  
3 before the Commission exceed the two questions she narrowly describes in her  
4 testimony. For instance, to consider the allegations in her Complaint, the Commission  
5 must consider what types of services Mrs. Bowers purchases from Windstream East to  
6 determine what tariff obligations may apply. Mrs. Bowers includes allegations that she  
7 has jurisdictional services that are subject to certain tariffing requirements under KRS  
8 278.160, but for the reasons explained in my initial testimony she is incorrect and  
9 purchases nonbasic services subject to Windstream East's Terms and Conditions. A  
10 determination on these points is necessary before the Commission can resolve other parts  
11 of Mrs. Bowers' claims.

12 **Q. Does Mrs. Bowers explain why she believes she has basic local exchange service (i.e.,**  
13 **“jurisdictional” service) subject to KRS 278.160?**

14 A. No. Her testimony is lacking on this point. She offers no explanation as to how her  
15 residential dial tone service which is purchased as part of a package and together with  
16 broadband and Protection Plus could possibly meet the definition of stand-alone basic  
17 local exchange service. As I explained at length in my initial testimony, Mrs. Bowers is a  
18 residential customer of Windstream East and purchases our residential local service as  
19 part of the “Feature Pack A” telephone service, DSL Ultra broadband services, and DSL  
20 Protection Plus wire maintenance plan. These are not jurisdictional service subject to the  
21 tariffing obligations cited by Mrs. Bowers. Interestingly, her testimony does not state that  
22 she has basic local exchange service, and she instead says merely that Windstream East  
23 “provides local telephone service at [her] home.” (*Id.*, first page, line 6.) To confirm, she

1 purchases nonbasic (and “nonjurisdictional”) services that include residential local  
2 telephone lines packaged with numerous calling features (*e.g.*, anonymous call rejection,  
3 automatic busy redial, call return, call block, call forwarding, call waiting, and Caller ID)  
4 along with broadband and Protection Plus. The fact that she has packaged local service is  
5 evident even in the partial June 14, 2010 invoice she attached as Exhibit C to her  
6 Complaint. Mrs. Bowers’ nonbasic services are not subject to mandatory tariffing  
7 requirements as she alleges, and her testimony provides no explanation otherwise as to  
8 how she believes they may be considered jurisdictional service.

9 **Q. Does Mrs. Bowers assert that the rates for the services she purchases from**  
10 **Windstream East are capped?**

11 A. Mrs. Bowers’ testimony is confusing on this point. As explained above, there should be  
12 no argument that Mrs. Bowers purchases nonbasic services from Windstream East.  
13 Certainly, she offers none in her testimony. Accordingly, her nonbasic services are  
14 governed by Windstream East’s Terms and Conditions consistent with KRS 278.544 as  
15 my attorneys will discuss in briefs. However, Mrs. Bowers’ testimony nevertheless  
16 includes a statement that “Windstream’s voluntary regulation plan prohibits it from  
17 raising rates on some customers in any circumstance, because Windstream agreed to rate  
18 capes as part of the alternative regulation plan it elected.” (*Id.*, first page, lines 11-14.)

19 **Q. Is Mrs. Bowers’ understanding correct?**

20 A. Mrs. Bowers is correct that we elected alternative regulation and that under that plan  
21 certain of our rates including rates for basic local exchange service were capped for a  
22 period of time. However, Mrs. Bowers is mistaken if she is suggesting that those  
23 provisions are relevant to the nonjurisdictional services she purchases from Windstream

1 East. Specifically, the alternative regulation plan to which Mrs. Bowers is referring is set  
2 forth in KRS 278.543, and her services are nonjurisdictional services subject to KRS  
3 278.544. In other words, the rate caps which Mrs. Bowers mentions have no relevance  
4 and do not apply to her nonbasic services. This is one reason I noted in my initial  
5 testimony that it is important to understand what types of services Mrs. Bowers actually  
6 purchases.

7 **Q. Even as to rates for basic local exchange service assuming that Mrs. Bowers even**  
8 **purchased such service, is her understanding correct that the GRS was contrary to**  
9 **the rate caps on jurisdictional service?**

10 A. Absolutely not. Mrs. Bowers is mistaken on all accounts. Even if she purchased basic  
11 local exchange service (which she clearly does not) the GRS still would have been  
12 lawfully applied to jurisdictional service. As I explained in greater detail in my initial  
13 testimony, surcharges like the GRS are not rates for telephone services and have never  
14 been treated as such. Even under the historical rate of return methodologies used by the  
15 Commission to establish service rates, these types of fees and surcharges were treated as  
16 additives and not part of the service rate. For example, municipal franchise fees (the  
17 precursor to the GRS) were imposed by local municipalities often as a percentage of  
18 basic local exchange service rates and were implemented without regard to the  
19 Commission's rate-of-return ratemaking principles in place at that time. The same is true  
20 under the modern alternative regulation regime. For example, under Mrs. Bowers'  
21 misguided understanding, if a taxing authority today increased local or state sales tax, if a  
22 local municipality increased a 911 fee, if the FCC increased the subscriber line charge, or  
23 if the Commission increased the rate of the telecommunications relay surcharge,

1           alternatively regulated carriers would not implement any of these increases. Likewise,  
2           under her theory, rate-of-return carriers would amend their tariffed rates for basic local  
3           exchange service in every exchange each and every time such a fee or surcharge increase  
4           was implemented. That approach is simply illogical and inconsistent with any historical  
5           or modern practice at the Commission of which I am aware. To the contrary, I am aware  
6           that the Commission approved a tariff filing by AT&T Kentucky to implement a  
7           surcharge similar to Windstream East's GRS during the time that AT&T Kentucky's  
8           rates for basic local exchange service were capped under the same alternative regulation  
9           plan that applies to Windstream East. Mrs. Bowers' understanding about the GRS and its  
10          relation to the rate caps for alternatively regulated carriers is erroneous by all accounts.

11   **Q.    Does Mrs. Bowers address the GRS in her testimony?**

12    A.    Only summarily. She states that Windstream East began assessing the GRS with respect  
13          to the services she ordered in June 2007 but thereafter offers no explanation of her failure  
14          to dispute or question the GRS as required by Windstream East's tariff during the two  
15          years prior to her attorneys filing the lawsuit on her behalf in 2009. (*Id.*, first page, lines  
16          16-18.) Mrs. Bowers also references the change in percentage amounts of the GRS  
17          assessment but fails to recognize that Windstream East assessed the GRS in varying  
18          amounts to help recover its costs of the underlying tax imposed on it as Windstream East  
19          communicated to her. (*Id.*, lines 18-19, 21-22.) Further, she states her understanding that  
20          Windstream East did not tariff the GRS with the Commission which I also explained in  
21          my testimony is not required. (*Id.*, lines 19-21.)

1 **Q. Does Mrs. Bowers' testimony offer any explanation as to why she failed to timely**  
2 **dispute or even question the GRS, including the assessment amounts, as required by**  
3 **the asserted tariff?**

4 A. No. Ironically, she generally mentions the tariff (which does not apply to her nonbasic  
5 services) but avoids discussion of the fact that even if the tariff were applicable to her  
6 services she nevertheless failed to comply with the timely dispute provisions of that tariff.  
7 In the lawsuit, Mrs. Bowers testified that she did not notice the GRS until she was  
8 contacted by her counsel who informed her of a potential issue with her Windstream  
9 bills. (*See* Bowers Depo., at 25-26, 31.) Since her deposition, her counsel have  
10 represented that they discussed the GRS with her in February 2009. (*See, e.g.*, Pls.' Reply  
11 Supp. Mot. for Class Cert., at 12.) The circumstances surrounding Mrs. Bowers' failure  
12 to promptly review and dispute her monthly bills is an issue that must be considered by  
13 the Commission before determining whether she may be excused from complying with  
14 the dispute provisions under the same tariff which she asserts (albeit incorrectly) applies  
15 to her local service. As I previously testified, this is particularly true where other  
16 customers did timely question the GRS and where each of Mrs. Bowers' monthly  
17 invoices (including the invoice she allegedly shared with her attorneys in February 2009)  
18 contained clear instructions for disputing and otherwise questioning the charges on her  
19 bills. To reiterate, we are not debating whether Mrs. Bowers failed to timely dispute the  
20 GRS by a matter of days or even weeks. Rather, this is an issue where Mrs. Bowers failed  
21 to question the GRS in any manner for a matter of years between June 2007 and the time  
22 that her attorneys recruited her to file a lawsuit on June 22, 2009.

1 **Q. Please tell the Commission what actions you are asking the Commission to take**  
2 **regarding Mrs. Bowers' Complaint.**

3 A. We are asking the Commission to deny Mrs. Bowers' Complaint, including finding as a  
4 threshold matter that she should have complied with all applicable provisions of the  
5 asserted tariff including those for filing timely disputes.

6 **Q. Does this conclude your rebuttal testimony?**

7 A. Yes, at this time. It may be necessary for me to further respond to Mrs. Bowers given that  
8 my ability to do so here is constrained by the abbreviated direct testimony she filed in  
9 support of her Complaint.

10 The Remainder Of This Page Was Intentionally Left Blank.



CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by United States First Class Mail, postage prepaid, on this the 24th day of June, 2011 upon:

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Counsel for Windstream Kentucky East, LLC

**ATTACHMENT**

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF KENTUCKY  
3 AT LOUISVILLE

4 DANA BOWERS and SUNRISE )  
5 CHILDREN'S SERVICES, INC.)  
6 on Behalf of Themselves & )  
7 Others Similarly Situated )  
8 PLAINTIFFS )

9 vs. )

) Civil Action  
) No. 3:09-CV-440

10 WINDSTREAM KENTUCKY EAST )  
11 LCC and WINDSTREAM )  
12 KENTUCKY WEST, LLC )  
13 DEFENDANTS)

14 DEPOSITION OF DANA BOWERS

15 TAKEN BY DEFENDANT

16 LOUISVILLE, KENTUCKY

17 March 28, 2011

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23  
24 VIRGINIA KLAPHEKE, CCR  
25 CCR No. 20042058  
2818 Hoock Avenue  
Louisville, KY 40205  
(502) 458-1755/(800) 782-3517

ORIGINAL

1           A.    No.

2           Q.    Can you state definitively whether  
3 you looked at any Windstream tariffs prior to  
4 the filing of this lawsuit?

5           A.    I don't recall having reviewed any  
6 prior to that.

7           Q.    Just so we're on the same page, I  
8 want to make sure I get the date right.  The  
9 date this lawsuit was filed was June 22, I  
10 believe, 2009, does that help?

11          A.    I'm sorry.  Is there a question?

12          Q.    Yes.  Does that help with knowing  
13 whether you reviewed any Windstream tariff prior  
14 to the filing of the lawsuit, which was June 22,  
15 2009, when the lawsuit was filed?

16          A.    I don't recall having reviewed it  
17 then.

18          Q.    When did you first notice a charge  
19 on your Windstream bill for a gross receipts  
20 surcharge?

21          A.    After having consulted with my  
22 attorneys.

23          Q.    So would it be fair to say that you  
24 had not noticed that charge on your bills prior  
25 to your attorneys pointing it out to you?

1           A.     That's fair.

2           Q.     Have you had any communications  
3 with anyone at Windstream regarding the gross  
4 receipts surcharge on your bills, the subject of  
5 this lawsuit?

6           A.     No.

7           Q.     Why not?

8           MR. ROYSE:   Object to the form.

9           THE WITNESS:   Well, I didn't notice  
10 it.

11          Q.     Well, when it was pointed out to  
12 you, is there any reason why you didn't contact  
13 Windstream to find out what the charge was for  
14 or why it was being assessed?

15          A.     Well, I don't think that would have  
16 been appropriate after the lawsuit was filed.  
17 Prior to the lawsuit being filed, I hadn't  
18 noticed it.  It was in a -- there are lots of  
19 charges on the bills that are taxes and  
20 surcharges and things like that, and so I don't  
21 think -- I shouldn't speculate about other  
22 customers, but I don't dissect my bill that  
23 closely.

24          Q.     Would you say you're a detail  
25 oriented person?

1 Q. Other than your husband?

2 A. No.

3 Q. When did you first contact  
4 attorneys about pursuing a lawsuit against  
5 Windstream?

6 A. I didn't contact them. I've had a  
7 very long-term relationship with the attorneys,  
8 a very trustful relationship, and they notified  
9 me of the surcharge and we discussed it and  
10 together decided to file the Complaint.

11 Q. Had you ever been a proposed class  
12 representative in a class action before this  
13 lawsuit?

14 A. No.

15 Q. Do you have an understanding of  
16 what that entails?

17 A. I believe I have a layman's  
18 understanding.

19 Q. Tell me what your understanding is  
20 of that?

21 A. That I am representing a group of  
22 people who would have a similar complaint, and I  
23 would be their representative.

24 Q. Have you ever been a party to a  
25 lawsuit before this one, you personally?